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November 16, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Re: Joint Application by SWBT Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Company for Provision of In-Region, InterLATA Service in Kansas and Oklahoma
CC Docket 00-217

Dear Ms. Salas:

Enclosed for filing in the above-referenced matter, please find an original and one copy of the Comments of KMC Telecom and Affidavit of Paul Moseley, dated November 15, 2000. This filing is in response to the Commission's *Public Notice* in the above-captioned proceeding, DA 00-2414, released October 26, 2000.

The enclosed documents were also filed electronically last evening, through the Commission's ECFS, and served electronically on the electronic service list. An additional twelve copies are also being filed with Janice Myles of the Common Carrier Bureau and one copy is being sent to International Transcription Service. Finally, this filing is also being served on the relevant state commissions, the U.S. Department of Justice, and the service list attached hereto.

KELLEY DRYE & WARREN LLP

Magalie Roman Salas, Secretary
November 16, 2000
Page Two

Please date-stamp one copy of the enclosed filing and return in the enclosed self-addressed stamped envelope.

Should you have any questions with regard to the foregoing, please do not hesitate to contact the undersigned at your convenience. Thank you for your attention to this matter.

Sincerely yours,



Andrew M. Klein
Counsel to KMC Telecom, Inc.

AMK:mla

Enclosures

cc: John Stanley, FCC (five copies)*
Janice Myles (12 copies)*
International Transcription Service*
SBC Counsel of Record (By hand or overnight mail)
U.S. Department of Justice, Telecommunications Task Force*
Joyce Davidson, Oklahoma Corporation Commission*
Eva Powers, Kansas Corporation Commission*
Attached Service List (via e-mail and mail)

* By hand delivery

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NOV 17 2000

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Joint Application by SWBT Communications,)
Inc., Southwestern Bell Telephone Company,)
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell Long)
Distance Company for Provision of In-Region,)
InterLATA Service in Kansas and Oklahoma)

CC Docket No. 00-217

**COMMENTS OF
KMC TELECOM, INC.**

Genevieve Morelli
Andrew M. Klein

KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
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(202) 955-9600

Its Attorneys

Dated: November 15, 2000

SUMMARY

Southwestern Bell Telephone Company (SWBT) has failed to satisfy the requirements of §271(c) in Kansas. Specifically, SWBT has failed to comply with checklist items ii (access to UNEs), iv (loops), viii (white page directory listings) and xi (number portability).

KMC's ability to compete in Kansas has been severely limited by SWBT's poor performance and unresponsive attitude. SWBT routinely provides inadequate service, promises improved performance when CLECs complain to regulators, reports that all problems have been addressed and then resumes providing inadequate service once regulators have completed their review. The recent course of events in Kansas, unfortunately, match this sequence precisely.

Although SWBT's reported loop performance is far from satisfactory, the reported performance does not even reflect all performance failures. One important measure that suffers in this respect reports missed due dates for loop provisioning. KMC's actual experience has been much worse than SWBT's numbers indicate because KMC is consistently forced to postpone orders when SWBT is not ready, in order to avoid end user outages.

Furthermore, SWBT's loop provisioning process is inadequate. SWBT's practice of returning firm order confirmations prior to verification that the necessary facilities are available is very disruptive. The lack of facilities will only be known after the CLEC has already relied upon the FOC in notifying its customer when service would be cut over and in scheduling its own workforce. This practice leads to last-minute postponements that frustrate customers, waste resources and, quite often, result in out-of-service conditions. To make matters worse, the outages that result from this defective process are quite lengthy.

SWBT's self-reported performance measurements clearly indicate that it cannot satisfactorily provision loops. For the highest volume loop categories (5 dB and DS-1 loops), SWBT's performance is deficient in the following areas: percent of installations meeting the standard intervals, percent missed due dates, and percent of due dates missed for lack of facilities. Although there are no metrics that capture directory listing performance, KMC's experience with SWBT-dropped listings confirms that SWBT is also unable to satisfy this checklist item.

SWBT has made only superficial attempts to address KMC's issues in an attempt to placate the regulatory authorities. Unfortunately, SWBT has made no real attempt to actually improve its service and satisfy the checklist. As a result, KMC has no option but to respectfully request this Commission reject SWBT's §271 application for Kansas.

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**Before the
Federal Communications Commission
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Joint Application by SBC Communications,)	
Inc., Southwestern Bell Telephone Company,)	
and Southwestern Bell Communications)	
Services, Inc. d/b/a Southwestern Bell Long)	CC Docket No. 00-217
Distance Company for Provision of In-Region,)	
InterLATA Service in Kansas and Oklahoma)	

**COMMENTS OF
KMC TELECOM, INC.**

KMC Telecom, Inc.,¹ ("KMC") by its attorneys, hereby submits these comments in response to the Commission's *Public Notice* in the above-captioned proceeding.² The Public Notice invites interested parties to comment on the Joint Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. ("SBC or SWBT") to provide in-region interLATA services in the States of Kansas and Oklahoma, pursuant to Section 271 of the Communications Act of 1934 ("the Act"), as amended.

I. INTRODUCTION - SBC IS ATTEMPTING TO OBTAIN §271 AUTHORITY WITHOUT COMPLYING WITH THE §271 CHECKLIST

SWBT has failed to satisfy the requirements of §271(c) in Kansas. While SWBT claims to be in compliance with the competitive checklist, its actions indicate otherwise. SWBT's actions, as described more fully herein and in the attached affidavit of Paul Moseley, clearly demonstrate that it has not met the requirements of the Act and that it has no intention of

¹ KMC operates in Kansas as KMC Telecom II, Inc.

complying with the Act following any grant of §271 approval. Specifically, SWBT has failed to comply with checklist items ii (access to UNEs), iv (loops), viii (white page directory listings) and xi (number portability).

KMC is a facilities-based Competitive Local Exchange Carrier ("CLEC") competing in Kansas and in many other states across the country. KMC and its affiliates are building high-speed, high-capacity advanced fiber optic networks to provide various services to business customers, including local and long distance voice and data services. KMC has been attempting to compete with SWBT in Kansas for roughly two years, having deployed a Lucent 5ESS switch and installed two SONET rings in Topeka.

KMC's ability to compete in Kansas has been severely limited by SWBT's poor performance and unresponsive manner. Although SBC's application reports that SWBT is providing satisfactory loop cut-overs, KMC's own experience with SWBT tells a very different story. Based on SWBT's performance, it has failed to demonstrate compliance with several items on the competitive checklist. The Commission must therefore withhold approval of SBC's Application, at least with respect to Kansas,³ at this time.

KMC must purchase unbundled network elements (UNEs) from SWBT in order to serve its customers. SWBT continually fails to meet the appropriate installation intervals and confirmed due dates for these UNEs. SWBT's dismal performance causes service delays and outages for KMC's customers. Once loops are finally provisioned, KMC must endure SWBT's failure to respond and/or inadequate response to repeated trouble reports.

² *Public Notice*, Comments Requested on the Application by SBC Communications Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Kansas and Oklahoma, DA 00-2414 (Oct. 26, 2000).

SBC's actions clearly demonstrate that the company's focus is on obtaining §271 authority, not on checklist compliance. SWBT has, in other words, attempted to paper over real issues and placate CLECs with promises of compliance without any true intention to satisfy the Act's requirements. SWBT's strategy regarding checklist compliance amounts to the following: (1) provide inadequate service; (2) promise improved performance and increased responsiveness when CLECs complain to regulators; (3) tell regulators all problems have been addressed and lousy service is a thing of the past, and finally (4) resume providing inadequate service once regulators have given green light on §271. The recent course of events in Kansas, unfortunately, match this sequence precisely.

KMC has been experiencing very poor service from SWBT in Kansas since it entered that market in December of 1998. Frustrated by the ongoing provisioning and maintenance problems, KMC filed a pleading in the Kansas Commission's §271 docket on July 31, 2000.⁴ The Staff of the Kansas Commission took note of KMC's complaint, and on August 21, 2000 requested that SWBT provide a status report on the issues raised by KMC, Adelphia Business Solutions and Birch Telecom. True to form, SWBT convened a meeting with KMC on September 6, 2000, in which it promised to improve performance and responsiveness in 20 different areas. SWBT then told the Kansas regulators that it had "successfully addressed the concerns raised by these particular CLECs, and put in place process improvements, procedures and training that will improve service" for all CLECs.⁵ However, several weeks later when the

³ KMC takes no position with respect to SBC's application for §271 authority in Oklahoma.

⁴ Comments of KMC Telecom II, Inc., SWBT Application Appendix C, Volume 26, Tab 253.

⁵ Reply Affidavit of Brian Noland, SWBT Application Appendix C, Volume 29, Tab 278, Page 9. Although the filing is not dated, it was apparently verified on September 13, 2000.

Kansas Commission indicated that it would support SWBT's §271 application, SWBT reverted back to lousy, unresponsive service. SWBT's poor performance, once unmasked, prevents a finding of compliance with §271(c).

II. SWBT HAS FAILED TO SATISFY CHECKLIST ITEMS TWO, FOUR AND ELEVEN

Item two of the competitive checklist requires SWBT to demonstrate that it provides "nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1)" of the Communications Act while item four requires SWBT to provide access to unbundled local loops. Checklist item eleven requires satisfactory number portability.⁶ Despite KMC's best efforts, SWBT has simply refused to provision loops, port numbers or provide maintenance & repair services that could be considered satisfactory in meeting these checklist requirements.

KMC's experience has been that SWBT is either incapable or unwilling to coordinate loop cut-overs in a manner that will provide accurate provisioning dates and prevent end users from losing service. SWBT cites numerous performance measurements in support of its contention that it is provisioning loops in compliance with the checklist. However, these numbers present a skewed view of SWBT's performance, as certain measurements fail to reflect real-world problems that affect CLECs' ability to provide service.⁷

⁶ 47 U.S.C. § 271(c)(2)(B)(ii), (iv) and (xi).

⁷ SWBT is likely to dispute KMC's assertion that numerous performance measurements mask real-world problems experienced by CLECs. However, the company consistently asserts that the data does not tell the whole story when it demonstrates poor performance. SWBT will frequently claim, for example, that there is a perfectly logical excuse for sub-par performance figures or that there was an "artificial" outage.⁷ KMC respects this Commission's ability to determine what the numbers demonstrate, as well as their inherent limitations.

One important set of measures that do not fully reflect the truly poor nature of SWBT's performance are those dealing with missed due dates for loop provisioning.⁸ While SWBT's reported performance in this area is far from satisfactory, KMC's actual experience has been much worse than SWBT's numbers would indicate. From January 1, 2000 through July 30, 2000, for example, SWBT missed the service cut-over due date for 22% of KMC's orders.

SWBT states that it offers both the fully coordinated hot cut (CHC) process and the frame due time (FDT) process, to allow CLECs to "select the process that best fits their resources and priorities."⁹ KMC uses the CHC process for hot cuts – not by choice, but because of the problems it has encountered attempting to use the FDT process. SWBT admits that FDT conversions have been rare in Kansas.¹⁰ There is good reason for this. The FDT process cannot be relied upon. SWBT resorts to the contention that there is "no reason to believe" its performance on FDT hot cuts will not be satisfactory in the future to support its position that the FDT process should be considered in determining checklist compliance.¹¹ This Commission must reject SWBT's "proof" as wholly insufficient. The FDT process should not be considered here, just as it was rejected in SWBT's Texas application.

The CHC process, on the other hand, should be considered and rejected as unsatisfactory in Kansas. This process is used by KMC because it is the lesser of two evils. Since the introduction of SWBT's new operations support systems ("OSS"), KMC's Project Management Team has been forced to spend an inordinate amount of time on each order in an

⁸ Metric number 58, for example.

⁹ SWBT Brief at page 96; Noland/Smith Affidavit, SWBT Application Appendix A, Tab 17, Page 48.

¹⁰ SWBT Brief at 98.

¹¹ *Id.*

effort to avoid missed provisioning dates. In an attempt to secure a clean cut-over with no loss of service to the customer, KMC's team routinely attempts to contact SWBT two days before the due date to determine whether SWBT has the necessary facilities in place and technicians available. SWBT has criticized KMC for these efforts,¹² which were adopted out of necessity in an effort to avoid either a postponement of the hot cut or a customer outage.

In criticizing KMC's attempts to facilitate cut-overs, SWBT has actually identified the flaws in its CHC process. Upon receipt of the CLEC request, SWBT apparently verifies that a time slot is open and that technicians are available, and then returns a firm order confirmation (FOC). Significantly, however, SWBT does not even attempt to verify that the necessary facilities are available until the day prior to the scheduled conversion time.¹³ The problem with this process, of course, is that the CLEC has already relied upon the FOC in notifying its customer when service would be cut over and in scheduling its own workforce. Verifying facilities so late in the process leads to last-minute postponements ("supps"), which cause frustrated customers, wasted resources and, quite often, out-of-service conditions since some work (i.e. switch translations) inevitably proceed ahead of the postponement. Despite these dangers, SWBT criticizes KMC's attempts to improve upon the process.

In some instances, outages of 8 hours or more occur despite the best efforts of KMC personnel. Due to the way orders are entered into SWBT's system, and the fact that once they are entered they become inaccessible, when orders are supp'd at the last minute the physical work can be stopped but the port of the number cannot. The problem of unreliable "firm" order

¹² SWBT's Reply Comments to the KCC, dated August 9, 2000, SWBT Application Appendix C, Volume 28a, Tab 256, Page 4.

¹³ *Id.*

confirmations and the resultant missed cut-overs is so prevalent and causes such harm to KMC's business relationships with its customers that KMC is routinely forced to 'voluntarily' push back due dates a week or more so that its customers are not put out of service. When KMC "voluntarily" supps its cut-over orders to avoid SWBT facility or coordination problems, SWBT does not count that as a missed due date.¹⁴

KMC has repeatedly brought the missed cut-over problem to the attention of SWBT personnel but the problem has not improved at all as a result. In an October 1999 letter to SWBT, KMC pointed out that persistent cut-over problems damage KMC's reputation, causing potential customers to reconsider or decline KMC's offerings.¹⁵ KMC called on SWBT to resolve the problems, but when the problems continued unabated for four more months KMC's Topeka City Director wrote to SWBT President Shawn McKenzie in an attempt to remedy the situation.¹⁶ That letter provided details regarding three separate occasions where SWBT missed promised cut-over dates without explanation.

When KMC raised the missed cut-over issue and these specific instances at the Kansas Corporation Commission, SWBT's response was to label KMC's information as "dated, anecdotal and confusingly vague."¹⁷ Then, in response to KMC's factual statement that SWBT had missed the service cut-over due date for 22% of KMC's orders, SWBT cited to performance

¹⁴ Thus, the 'voluntary' push back of due dates by KMC results in an understatement of the percentage of missed cut-overs.

¹⁵ Letter to Alex Cedillo, Account Manager, Southwestern Bell, from John Evans, State Regulatory Manager, KMC, October 26, 1999, SWBT Application Appendix C, Volume 26, Tab 253, Appendix 1.

¹⁶ Letter to Shawn McKenzie, President, Southwestern Bell Telephone Company, from Paul Moseley, City Director – Topeka, KMC, March 20, 2000, SWBT Application Appendix C, Volume 26, Tab 253, Appendix 2.

¹⁷ SWBT's Reply Comments dated August 9, 2000, SWBT Application Appendix C, Volume 28a, Tab 256, Page 2.

measure 58 (for 5 dB loops) as proof that “missed due dates simply are not the problem KMC would have the KCC believe.”¹⁸ However, SWBT missed **14.3%** of KMC’s confirmed due dates the very next month, as reported by SWBT in the same metric 58.¹⁹ In fact, SWBT missed **22.6%** of all CLECs’ due dates that same month. By contrast, SWBT missed only 5.6% of its own customers’ due dates in September, 2000.²⁰

SWBT provided similarly poor performance in meeting due dates for DS-1 loops. While KMC appreciates the fact that SWBT met each of the due dates it confirmed for KMC in September, SWBT missed **20%** of KMC’s due dates in August and a whopping **60%** of them in July.²¹ The CLEC community as a whole did not fare any better; SWBT missed 26.8% of its due dates in September, over 30% in August and 45% in July.²²

SWBT also failed to satisfactorily complete loop installations within the appropriate number of days. Over the past year, SWBT only provisioned 75% of 5 dB loops within the three day interval for CLECs as a whole, which closely tracks SWBT’s poor

¹⁸ *Id.* at page 4.

¹⁹ *Source:* SWBT Performance Measurement Tracking Report for KMC Telecom II, SBC Website, September 2000 Report, Metric 58 (“Percent SWBT Caused Missed Due Date”), 5.0 dB Loop. *See also*, September Data Joint Affidavit of Dysart, Noland and Smith, SWBT Application.

²⁰ *Id.*

²¹ *Source:* SWBT Performance Measurement Tracking Report for KMC Telecom II, SBC Website, September 2000 Report, Metric 58 (“Percent SWBT Caused Missed Due Date”) DS-1 Loop.

²² *Id.*; *See also*, Dysart Affidavit Attachment D, Measurement 58-06, page 107, SWBT Application Appendix A, Tab 18.

performance to KMC individually.²³ In provisioning DS-1 loops, SWBT's performance was even worse, provisioning just 66.4% of the loops within the requisite interval.²⁴

Based on past experience, KMC anticipates that SWBT will tell this Commission that these numbers are not as bad as they appear,²⁵ are due to some aberration,²⁶ or that the problem has been or will be fixed.²⁷ SWBT may even repeat the remarkable assertion that its wholesale performance is acceptable since its retail customers are receiving even worse service.²⁸ Regardless of which of these assertions SWBT chooses, it cannot counter the facts and prove that its loop performance meets the appropriate standards that this Commission has established.

In sum, it appears that there is a reason why SWBT has only provisioned 3900 stand-alone loops in Kansas.²⁹ KMC submits that this low number is a direct result of SWBT's failure to develop the capability to provision loops or port numbers in a satisfactory manner.

²³ *Source:* SWBT Performance Measurement Tracking Report for KMC Telecom II, SBC Website, September 2000 Report, Metric 56 ("Percent Installations Completed in 'X' Days") (SWBT only provisioned 76.7% of KMC's loops within the required interval); *See also*, Dysart Affidavit Attachment D, Measurement 56, SWBT Application Appendix A, Tab 18.

²⁴ *Id.*

²⁵ *See, for example*, SWBT Brief at page 98 (the on-time performance shortfall "does not offer a complete picture of SWBT's ability to perform timely FDT cuts."); and Dysart Affidavit, SWBT Application Appendix A, Tab 18, page 51 ("it would be erroneous to presume that this result [62.5% of DS-1s provisioned within the appropriate interval] suggests that SWBT has discriminated in its provision of DS1 loops for Kansas CLECs").

²⁶ *See, for example*, SWBT Brief at page 98, footnote 89. SWBT asserts that both of the reported cut-over outages are "artificial."

²⁷ *See, for example*, SWBT Brief at page 98. "SWBT has devoted considerable time and resources to perfecting the FDT procedure throughout its five-state region." Query whether any of the time or resources were actually spent in Kansas.

²⁸ "[T]he percentage of SWBT-caused missed due dates has been higher for SWBT retail customers than for CLECs." SWBT Brief at page 94, *citing* Dysart Affidavit, ¶89.

²⁹ SWBT Brief at page 40.

III. SWBT HAS COMPLETELY FAILED TO RESOLVE LOOP-RELATED OPERATIONAL ISSUES

Following KMC's filing with the KCC, and the KCC staff's instruction to SWBT to address the issues raised by KMC, SWBT suddenly became responsive. This responsiveness, unfortunately, only lasted about four weeks – just enough time for SWBT to earn a positive recommendation from the Kansas Commission.

During its 'responsive period,' SWBT hosted a meeting with several KMC Directors in Texas on September 6, 2000, to discuss and address the operational issues KMC had raised. As referenced in Mr. Moseley's Affidavit, a list of twenty "Action Items" was created during the SWBT/KMC meeting. Through these items, SWBT promised to improve performance and responsiveness in many loop-related areas. Almost immediately following this meeting, SWBT told Kansas regulators that it had "successfully addressed the concerns raised by KMC, and put in place process improvements, procedures and training that will improve service" for all CLECs.³⁰

As Mr. Moseley's affidavit describes in greater detail, SWBT quickly reverted to sub-standard service once the Kansas Commission indicated that it would support SWBT's §271 application. The first Action Item seemed quite simple: SWBT was to provide an emergency number for KMC to call when local number portability ("LNP") conversions go awry. The first number that SWBT provided was disconnected, while the second number led to a SWBT employee who knew nothing about number portability or outages. KMC has yet to be provided with a correct phone number.

³⁰ Reply Affidavit of Brian Noland, SWBT Application Appendix C, Volume 29, Tab 278, Page 9.

The second Action Item required SWBT to provide an escalation list for maintenance and repair troubles, while the third and seventh obligated SWBT to provide coordination and escalation numbers for its LOC and LSC centers. For maintenance and repair, KMC was given the number listed in the front of the local phone directory. That number connected KMC to an outage center in Texas. The LOC number also rang through to Texas, and could not provide the requisite cut-over coordination. The LSC number was never provided. The first time KMC's Kansas operations department received an escalation list, with numbers, was as an attachment to the instant application.³¹

Action Item Five involved SWBT communicating to KMC its newly revised hot cut process. Since this revised process was never communicated, KMC and SWBT personnel worked out a cumbersome process whereby KMC calls its SWBT Account Representative, who then calls the SWBT technicians to arrange the hot cut, and then calls KMC to advise who to call to proceed with that specific conversion. This 'daisy-chain method' has now become the *de facto* hot cut process.

Action Item Six was designed to address customer outages caused by lack of coordination between the loop cut-over and the porting of the number. SWBT's MARCH system apparently closes for maintenance at midnight every night, meaning switch translations that are inadvertently entered cannot be rectified until the following day. The result is that the affected customer loses all incoming calls during this outage. SWBT has not addressed this item.

³¹ Attached to the Noland/Smith Affidavit, SWBT Application Appendix A, Tab 17.

By way of the foregoing examples, and others addressed in the attached affidavit, it is apparent that SWBT will behave properly when its corporate interests are served, but will otherwise ignore its obligations under the Act. Anti-backsliding performance assurance plans are not designed or suited to bring SWBT's performance up to acceptable levels, which means the Commission must require further proof of checklist compliance before considering a grant of this application. In light of this evidence, the Commission must deny SWBT's application at this time.

IV. SWBT HAS FAILED TO SATISFY CHECKLIST ITEM EIGHT

Item eight of the competitive checklist requires SWBT to demonstrate that it provides white page directory listings for CLEC customers.³² SWBT has failed to provide white page listings for many KMC customers in Kansas and thus cannot make the required demonstration.

During the recent directory printing, at least 15 of KMC's customers did not have white page listings in the telephone directory. Neither KMC nor its customers were provided with proofs prior to the directory closing.³³ The checklist requires that listings be provided, and it should not be the CLECs' responsibility to expend resources to verify that listings were not dropped upon cut-over and have not been dropped thereafter. SWBT acknowledged the problems it is encountering in this area during the September 6, 2000 operational meeting, and

³² 47 U.S.C. § 271(c)(2)(B)(viii).

³³ While the Rogers Affidavit asserts that various methods are now available to verify listings, KMC had not been provided with that access or listing proofs. SWBT Application Appendix A, Tab 7, page 30, *et seq.*

Action Items nine, ten and eleven all attempt to address the problem of dropped directory listings.³⁴

At the KMC/SWBT operational meeting, SWBT agreed to resolve the problems that were causing directory listings to be dropped, and to affirmatively provide proofs to KMC. SWBT also undertook to provide greater access to its systems and to coordinate a conference call to facilitate resolution of both directory listing and directory assistance problems.³⁵ In the continuing absence of this resolution, KMC employees manually check directory listings and very often find that customers have been left out.

Finally, the Rogers Affidavit cites to this Commission's Texas 271 Order in an attempt to support its contention that SWBT Kansas is meeting its obligations under this checklist item.³⁶ KMC believes that such an assertion is of little or no evidential value in the instant review, since the issue here is whether listings for Kansas end users are being entered into Kansas directories. KMC's experience demonstrates that these end user listings are not being properly entered and listed.

³⁴ See Exhibit 1 to the Affidavit of Paul Moseley, attached hereto.

³⁵ *Id.*

³⁶ Rogers Affidavit, SWBT Application Appendix A, Tab 7, Page 32.

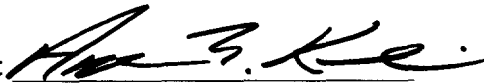
V. **CONCLUSION**

For the foregoing reasons, the application of SWBT for §271 authority in Kansas should be denied. The Commission should not permit SWBT's mere reliance upon its performance in Texas to mask the poor performance experienced by KMC and other CLECs in Kansas. Until such time as SWBT addresses the deficiencies identified herein, the Commission must deny SWBT's application for §271 authority in Kansas.

Respectfully submitted,

KMC Telecom, Inc.

Dated: November 15, 2000

By: 

Genevieve Morelli
Andrew M. Klein

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Its Attorneys

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InterLATA Service in Kansas and Oklahoma)

CC Docket No. 00-217

AFFIDAVIT OF PAUL MOSELEY

STATE OF KANSAS)
)
COUNTY OF SHAWNEE)

I, Paul Moseley, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. My name is Paul Moseley. My business address is 1100 Wanamaker Street, Topeka, Kansas.

I am City Director for KMC Telecom - Topeka. In this position, I am responsible for the coordination and delivery of service to customers for all products sold in the Topeka area.

2. KMC Telecom (KMC) is a facilities-based Competitive Local Exchange Carrier ("CLEC") competing in Kansas and in various other states across the country. KMC and its affiliates are building high-speed, high-capacity advanced fiber optic networks to provide various services to business customers, including local and long distance voice and data services.

KMC Telecom has been attempting to compete against SBC in Kansas for roughly two years, having deployed a Lucent 5ESS switch and installed two SONET rings in Topeka.

PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND

1. I have been the City Director for KMC Telecom - Topeka since November, 1999. Overall, I have 34 years experience in the telecommunications industry. Prior to joining KMC, I was a Senior Account Executive with Lucent Technologies in the Topeka area for 14 years and a District Sales Manager for AT&T for four years. Before my service with AT&T, I was with Southwestern Bell as a District Sales Manager, District Staff Manager, Senior Account Executive, Account Executive and Senior Service Consultant.
2. I attended Rock Hurst College in Kansas City, Missouri and have had management and technical training at MIT and Harvard Business School. I also served in the U.S. Army in Vietnam and was awarded the Silver Star, a Purple Heart, and an Army Commendation medal.
3. As City Director, I am responsible for all aspects of customer service, including the monitoring and management of vendor performance. In that capacity, I have had numerous meetings and telephone conversations with the President of SWBT Kansas and many other SWBT employees to discuss cut-over delays, hot cut problems, maintenance issues and many other issues.

SWBT's POOR PERFORMANCE TO KMC

1. KMC's ability to compete in Kansas has been severely limited by SBC's poor performance and unresponsiveness.
2. In order to provision the aforementioned services, KMC must interconnect with SWBT's local infrastructure and purchase unbundled network elements from SWBT in order to serve its customers. SWBT continually fails to meet the appropriate installation intervals and

confirmed due dates. SWBT's poor performance causes service delays and outages for KMC's customers. Once loops are finally provisioned, KMC must endure SWBT's failure to respond and/or inadequate response to repeated trouble reports.

4. I have personal knowledge of the very poor service KMC has received from SWBT in Kansas since I became City Director in November of 1999. Frustrated by these ongoing provisioning and maintenance problems, I asked KMC management to file a pleading raising these issues in the Kansas Commission's §271 docket. That pleading was filed on July 31, 2000.
5. SWBT convened a meeting with representatives of KMC on September 6, 2000 in order to address the concerns raised by KMC with the Kansas Commission. The KMC people at the meeting, in Fort Worth, Texas, were Brian Murdoch and Zachary Baudoin of KMC's Carrier Management Organization, Sammy Fertitta, KMC City Director – Longview, Texas, and myself. Eric Larsen, Director, Account Team, Carol Steiner, Account Manager, Tyrone Moore, Service Manager, Joe Garcia, LOC Manager, and other managers from SWBT's LSC and LOC, attended on behalf of SBC and SWBT.
6. At the September 6, 2000 meeting, SWBT promised to improve performance and responsiveness on 20 discrete items. Each of these items was memorialized in the two e-mail messages attached to this Affidavit as Exhibit 1. SWBT's responsiveness improved tremendously in the days following that meeting. However, once the Kansas Commission indicated that it would support SWBT's §271 application several weeks later, SWBT reverted to its poor, unresponsive service. For example, SWBT's service manager no longer returns calls, and when he does his response is that the issue does not fall under his control.

7. One of the most significant problem areas of SWBT's performance is missed due dates for loop provisioning. KMC's actual experience has been far worse than one would be led to believe looking at SWBT's numbers. From January 1, 2000 through July 30, 2000, for example, our records show that SWBT missed the service cut-over due date for 22% of KMC's orders. SWBT's reported numbers will likely not reflect this missed cut-over number, since SWBT does not count all misses for which it is actually responsible.
8. While SWBT apparently offers both the CHC (Coordinated Hot Cut) and FDT (Frame Due Time) hot cut processes, KMC uses the CHC process because of the problems it has encountered attempting to use the FDT process. In fact, as discussed below, KMC now believes that it actually uses a variation of the CHC process.
9. Since the introduction of SWBT's new operations support systems, KMC's project managers have been forced to spend a tremendous amount of time on each order in an effort to avoid SWBT-missed provisioning dates. As part of this hand-holding process, we attempt to contact SWBT two days before the scheduled due date to determine whether SWBT has the necessary facilities in place and technicians available, since experience has taught us that this is not always the case (despite the existence of a firm order confirmation).
10. SWBT-caused last-minute postponements, or due date "supps," cause frustrated customers, wasted resources and, quite often, out-of-service conditions since some work inevitably proceeds ahead of the rescheduled cut-over date.
11. The problem of unreliable "firm" order confirmations and the resultant missed cut-overs is very prevalent, and causes tremendous harm to KMC's business relationship with its customers. Where SWBT indicates that it cannot meet the due date and time, KMC will very often postpone the cut by a week or more so that our end users are not put out of service. It

is my understanding that when KMC supps its cut-over orders to avoid SWBT facility or coordination problems, SWBT does not count those orders in its reports as missed due dates. In fact, after I advised SWBT that KMC will no longer voluntarily supp orders for SWBT causes, and that SWBT's reported numbers would therefore look even worse then they do, SWBT agreed to undertake many of the actions addressed below.

12. As previously mentioned, a list of twenty "Action Items" was created at the September 6th meeting. Most of these items related to SWBT's failure to properly provision UNE loops.
13. The first Action Item seemed quite simple: SWBT was to provide an emergency number for KMC to call when LNP conversions proceed without the corresponding physical hot cut. When we called the number that SWBT provided, however, we found that it had been disconnected. The second number provided led to a SWBT employee who knew nothing about number portability or outages. KMC has yet to be provided with a correct phone number.
14. Action Item Six (which is related to item one) was particularly important since it addressed one of the causes of customer outages that result from a lack of coordination between the loop cut-over and the porting of the number. When SWBT calls at the last minute and tells us it has no facilities or cannot proceed for some other reason, we supp the order but the port still goes through. This occurs because of the way work orders are entered into the SWBT system and are then inaccessible. Compounding the problem is the fact that SWBT's switch processing system closes for maintenance at midnight, and any switch translations that are inadvertently done cannot be reversed until the following day. As a result, the affected customer loses all incoming calls during this outage, which lasts for at least 8 hours. SWBT has not addressed this item.

15. Under Action Item Five, SWBT was to provide KMC with its newly-revised hot cut process.

SBC told us that it would no longer coordinate hot cuts as it had in the past, and that its new process had taken effect July 15th. Since this revised process was never communicated to us, KMC and SWBT have had to work out a cumbersome informal process whereby KMC calls its SWBT Account Representative, who then calls the SWBT technicians to arrange the hot cut. The Account Representative then calls us to advise who we should call to proceed with that specific conversion.

16. Action Items Two, Three and Seven required SWBT to provide escalation lists for KMC to use when assistance was needed in addressing specific end user problems. SWBT specifically agreed to provide escalation lists for maintenance and repair troubles, as well as for its LOC and LSC provisioning centers. For maintenance and repair, KMC was given the number listed in the front of the phone directory - a number that connected KMC to an outage center in Texas. The LOC number also rang through to Texas, and could not provide the requisite cut-over coordination. The LSC number was never provided.

17. SWBT agreed in Item Eight to provide a standard intervals matrix for all service offerings, to enable KMC to request appropriate due dates and inform customers when they should expect service to be cut over. This interval matrix has not been provided.

18. Items Nine, Ten and Eleven all addressed the problem of SWBT dropping directory listings when customers move their service from SWBT to KMC. SWBT was to resolve the problems that were causing directory listings to be dropped, and begin providing proofs to KMC. Neither KMC nor our customers had seen proofs prior to closing, and that situation has not changed. SWBT also was to provide KMC access to its systems to facilitate resolution of DL/DA problems. In the continuing absence of this access, KMC employees

manually check directory assistance listings and most often find that our customers have been left out. Finally, SWBT was to coordinate a conference call to further address these issues. No call has been set up.

19. Another Action Item dealt with SBC's Advanced Solutions entity (ASI), that has been completely unresponsive to escalations and status reports. SBC agreed to develop procedures and to communicate them to KMC, as well as provide an organizational chart and contact information. None of this information has been provided. This item, in fact, resulted from a crisis that occurred this past August. KMC took over voice service for a bank customer, but the customer left its DSL service with ASI. The bank customer lost service because his DSL line was inadvertently disconnected by SWBT during the port of the other lines. KMC notified SWBT within two minutes of the disconnect and contacted both SWBT and ASI. KMC was told it would take **21 days** to restore the customer's DSL service, and the customer was, understandably, extremely upset. KMC escalated the issue within SWBT, which promised that it would be addressed. SWBT finally admitted after six days that SWBT had no control since ASI was involved. Three weeks after the outage, the DSL service was restored.
20. SWBT has not taken action on any of the remaining Action Items, which involve issues such as double billing, PIC changes and DLRs for hot cuts.
21. Finally, I would like to relate an interconnection crisis that transpired just this past weekend. SWBT decided to change the switch in the Jackson Central Office ("CO") in Topeka, where KMC is collocated, from a 1AESS to a DMS100. We believe that KMC is the only CLEC collocated in that CO. SWBT began the conversion at 2:30 a.m. on November 11th. With all reports checking out properly, the KMC technician left at 5 a.m. Later that morning, at 11:05

a.m., a KMC customer (an answering service for a group of doctors) reported that all incoming service had been lost. Upon checking with SWBT, it was confirmed that all of KMC's 288 circuits (12 T-1s) serving the Jackson CO were down for almost all incoming and outgoing calls. Despite SWBT's prior promise that KMC's traffic would be routed around the new switch if the translations did not work, this re-routing did not occur.

22. SWBT began working to fix the translations errors, but no estimated completion time was provided. KMC's technician stayed on-site day and night, while SBC shift changes continued as normal. Finally, KMC tried to escalate the matter on Sunday morning, but since we had not been provided the escalation list (referenced earlier), we were only able to reach a second line manager; this was only possible when KMC obtained the phone number from the SWBT technicians. The SWBT manager did not arrive until six hours later. At 5 p.m. Sunday, the first trunk group came back up. By 7:05 p.m., the remainder of the trunks were restored, but 35 of the circuits went down again at 12:30 a.m. Monday. These were finally fixed at 9:30 a.m. on Monday.

23. As the foregoing indicates, SWBT has serious problems providing KMC with the services that it is required to provide pursuant to the Communications Act. I strongly disagree with the statement in the Noland/Smith Affidavit that SWBT's loop process "affords efficient competitors a meaningful opportunity to compete."¹ As my experience as City Director in Topeka has shown, SWBT's hot cut and number portability processes are nowhere near satisfactory, and its directory listing and interconnection performance are highly suspect.

This concludes my affidavit.

¹ Page 49.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

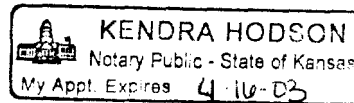
Executed on November 15, 2000.


Paul Moseley
KMC Telecom, Inc.

STATE OF KANSAS)
)
COUNTY OF) ss

Subscribed and sworn to before me this 15 day of November, 2000.

Witness my hand and official seal.



My Commission expires: 4-16-03.


Notary Public

E-mail from Paul Moseley, KMC, to Brian Murdoch, KMC,
(Confirming SBC Action Item List)

From: Moseley, Paul
Sent: Wednesday, September 27, 2000
To: Murdoch, Brian
Cc: 'gmorelli@kellydrye.com'
Subject: Action Items from 9/6

Brian,

Great Job! Mike Duke called a few minutes ago and I faxed your e-mail to him for inclusion in his response to SW Bell. Hope you don't mind.

Items look fine. I met with Tyrone in Topeka yesterday, gave him a tour of our admin and C.O. so he will have a better feel for KMC and what we do. He was impressed. Also covered a few of the action items:

1. The outage number for LNP Outages does not work. We called and were transferred 4 times and then sent back to where we started. No one knew what we meant by LNP outage. Tyrone is working on this.
4. ASI group is unresponsive. Tyrone states that if this happens again call him. We will.
5. Coordinated hot cut - We have two cases he is working on now.
8. Still no standard intervals other than the 0+3 days. Tyrone still thinks we can find out order status with 48 hours. I assured him it is 24 hours and that gives us little time to respond if we need to reschedule.
13. PIC Freeze - Still no guidelines
16. Still not getting a call before DD on coordinated cuts. Tyrone will follow up.
18. See 16 above.

Tyrone seemed very concerned and helpful. I also introduced him to Kevin Bittner our National Accounts Vice President. Kevin would like him to come back to discuss specific issues he has with SW Bell. You may want to coordinate this with Kevin and Tyrone.

Hopefully we are on our way to a better working relationship with SWB.

E-mail from Brian Murdoch, KMC, to Paul Moseley and Sammy Fertitta, KMC
(Memorializing SBC Action Item List)

-----Original Message-----

From: Murdoch, Brian
Sent: Wednesday, September 27, 2000
To: Moseley, Paul
Subject: Action Items from 9/6

Paul and Sammy,

Take a look at the list below and keep me honest...

SWBT Action Items from 9/6 Operations Review:

1. Provide new Outage telephone number for CLECs to call for LNP Conversions that go wrong.
2. Provide Maintenance and Repair telephone number for CLECs to call in cases of trouble.
3. Provide LOC Call Center telephone number for CLECs to call to check status and escalations.
4. SBC's ASI group has been unresponsive to escalations and status, SBC to develop procedures and communicate.
5. Coordinated Hot Cut process has been revamped and is to be communicated.
6. SBC's MARCH system for translations goes into maintenance mode at 12 midnight every evening. LNP conversions without loops get cut at 11:59pm, resulting in customer outage. SBC to resolve.
7. SBC to provide current escalation lists for the LOC and LSC centers.
8. SBC to provide standard intervals matrix for service offerings.
9. DL not being published, SBC to resolve.
10. SBC to provide EPSLERA(sp) access to facilitate DL/DA issue resolution.
11. SBC to coordinate conference call with KMC to resolve DL issues.
12. SBC to work with KMC on double billing issues.

13. SBC to work with KMC on PIC freeze/PIC change issues.
14. SBC to communicate procedures for winbacks/loss notification, to include disconnects and port backs.
15. SBC to work with KMC regarding arbitrary addition of line conditioning on circuits. Line conditioning increases the circuit price.
16. SBC is to call x hours ahead of DD on coordinated cuts.
17. SBC to deliver DLR within x days of DD.
18. SBC's new OSS doesn't allow Kansas to do coordinated hot cuts. SBC to resolve.
19. Escalation procedures breaking down within SBC's LOC and LSC. SBC to resolve.
20. SBC system EBTA2 was mentioned. Follow-up conf. call to understand how it might assist KMC is to be coordinated by SBC.

Brian C. Murdoch
Director/Carrier Management
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